

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EDWIN GARCIA,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE COMMISSIONER WILLIAM J.
BRATTON, and NYPD OFFICER JOHN DOE,

Defendants.
-----X

Plaintiff requests a trial by jury

COMPLAINT

Civil Action No.
1:16-cv-9046

Plaintiff, EDWIN GARCIA, as and for his Complaint, by his attorney, KUBICK & ASSOCIATES, P.C., respectfully alleges, upon information and belief, as follows:

JURISDICTION:

1. That Jurisdiction is founded upon the existence of Federal Question.
2. That this is an action to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a right, privilege and immunity secured to plaintiff by the First and Fourteenth Amendments to the Constitution of the United States (42 U.S.C. sec. 1983) and arising under the law and statutes of the State of New York.
3. Jurisdiction is founded upon U.S.C. secs. 1331 and 1343(a)(3) and 1343(a)(4), this being an action authorized by law to redress the deprivation under color of law, statute, ordinance, regulation, custom and usage of a right, privilege and immunity secured to plaintiff by the First and Fourteenth Amendments to the Constitution of the United States.
4. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of TEN MILLION (\$10,000,000.00) DOLLARS.

PARTIES:

5. That the plaintiff is a Citizen of the United States and resident of the County of Kings, City and State of New York.
6. That the defendant, The City of New York, was and still is a municipal corporation duly organized and existing under the Laws of the State of New York.

7. Upon information and belief, that at all times hereinafter mentioned, the defendant, The City of New York, its agents, servants, and employees operated, maintained and controlled the Police Department of the City of New York, a Department thereof, including all the police personnel thereof.
8. Upon information and belief, that at all times hereinafter mentioned, and prior, on and subsequent and continuing on or about August 14, 2015 and December 3, 2015, Police Officer “John Doe”, was employed by The City of New York, as a police officer, detective, sergeant, lieutenant, captain and/or other ranks.
9. Upon information and belief, that at all times hereinafter mentioned, defendant William J. Bratton, Commissioner of the Police Department of the City of New York was acting as Police Commissioner of The City of New York, and an employee of the City of New York.
10. Upon information and belief, that at all times hereinafter mentioned, the defendant William J. Bratton, Commissioner of the Police Department of the City of New York was hired by The City of New York as Police Commissioner of the Police Department of The City of New York and designated as head of the police officers for the City of New York.
11. This action arises under the United States Constitution, particularly under provisions of the Fourth and Fourteenth Amendments to the Constitution of the United States and under federal law, particularly the Civil Rights Act, Title 42 of the United States Code, Section 1983 and the rights under the Constitution and laws of the State of New York.
12. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of New York, and under the authority of their office as police officers of said state, city and county

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

13. That plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked “1” through “12” with the same force and effect as if more fully set forth herein.

14. That on or about August 14, 2015 at approximately 10:00 a.m. at the 170th Street and Jerome Avenue Subway Station, Bronx, New York and December 3, 2015 at approximately 6:45 PM Police Officer “John Doe” did improperly arrest, detain and imprison the plaintiff at or about the Utica Avenue “4” train station, Utica Avenue, at or near its intersection with Eastern Parkway, Kings County, New York. Both of said arrests were without basis and alleged to relate to his cell-phone ringtone.
15. That the said arrest and imprisonment was caused by the defendants, their agents, servants and employees, without any warrant or other legal process and without authority of the law and without any reasonable cause or belief that the plaintiff was in fact guilty of such crimes. The August 14, 2015 arrest was apparently not assigned a docket number. The December 3, 2015 arrest was assigned docket number 2015KN083526.
16. That the defendants, their agents, servants and employees acting within the scope of their employment, detained and imprisoned the plaintiff even though the defendants, their agents, servants and employees, had the opportunity to know or should have known, that the matters hereinbefore alleged, wrongfully, unlawfully and without a sufficient charge having been made against the plaintiff, directed that the plaintiff be searched and placed in confinement at said location.
17. That the plaintiff did not contribute in any way to the conduct of the defendants, their agents, servants and employees and was forced by the defendants to submit to the aforesaid arrest and imprisonment thereto entirely against his will.
18. That as a result of the aforesaid accusations made by the defendants, their agents, servants and employees acting under their employment and within the scope of their authority, made falsely, publicly, wickedly and maliciously, the plaintiff was compelled to appear before a Judge of the Criminal Court of the City of New York, and to be, upon information and belief, arraigned.
19. That the defendants, their agents, servants and employees, as set forth aforesaid on the aforementioned date, time and place, intended to confine the plaintiff; in that the plaintiff was conscious of the confinement; plaintiff did not consent to the confinement; and that the confinement was not otherwise privileged.

20. That by reason of the false arrest, imprisonment and detention of the plaintiff, plaintiff was subjected to great indignities, humiliation and ridicule in being so detained, charged and prosecuted with various crimes, and greatly injured in his credit and circumstances and was then and there prevented and hindered from performing and transacting his necessary affairs and business, and he was caused to suffer much pain in both mind and body, the loss of employment opportunities.
21. That by reason of the foregoing, plaintiff has been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

22. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "21" with the same force and effect as if more fully set forth herein.
23. That the defendants, their agents, servants and employees negligently, carelessly and recklessly failed to properly train and supervise their employees and affiliates.
24. That the aforesaid occurrence transpired as a result of said negligence of the defendants, without any negligence on the part of plaintiff.
25. That by reason of the aforesaid, plaintiff suffered the above-referenced damages.
26. That by reason of the aforesaid, plaintiff has been damaged in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

27. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "26" with the same force and effect as if more fully set forth herein.
28. That the defendants, their agents, servants and employees were negligent in their performance of their duties, including in their police duties and administrative duties.
29. That the aforesaid occurrence transpired as a result of said negligence of the defendants, without any negligence on behalf of the plaintiff.
30. That by reason of the aforesaid, plaintiff suffered the above-referenced damages.
31. That by reason of the aforesaid plaintiff has been damaged in the sum of TEN MILLION

(\$10,000,000.00) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

32. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “31” with the same force and effect as if more fully set forth herein.
33. That the defendants, their agents, servants and employees falsely arrested and imprisoned the plaintiff, and caused same, and deprived plaintiff of his rights and liberties as set forth in the Constitution of the United States and of the State of New York, handcuffed him and threatened him with the possible use of firearms and the use of physical force, falsely imprisoned plaintiff without his consent without privileged, arrested and imprisoned plaintiffs without probable cause, falsely charges plaintiff with crimes known to be false, assaulted and battered plaintiff, failed to properly supervise, train, retain, hire their agents, servants and employees, despite the foregoing causing a clear and present danger to the citizens of the City and State of New York, prosecuting plaintiff without probable cause not as individuals, but under color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York, and under authority of their office as police officers for said entity.
34. Plaintiff did not commit any illegal act, either or at the time he was falsely arrested and imprisoned, maliciously prosecuted and deprived of his constitutional rights as set forth in the Constitution of the United States, particularly 42 U.S.C. Sec.1983 and the Constitution of the State of New York.
35. The defendants, and other persons unknown to plaintiff, acting under color of law, have subjected plaintiff and other persons to a pattern of conduct consisting of illegal harassment, assault and battery, false imprisonment and arrests and malicious prosecution of persons, in the City and State of New York, in denial of rights, privileges and immunities guaranteed plaintiff and other citizens by the Constitutions of the United States.
36. This systematic pattern of conduct consists of a large number of individual acts of violence, intimidation, false arrest and false imprisonment and malicious prosecution

upon plaintiff and other citizens by members of the police department of the defendant, City Of New York, acting in concert with persons unknown to plaintiff and under color of law, are illegal, improper and unrelated to proper activities of police officers.

37. Although the defendants, knew or should have known, of the aforesaid pattern of conduct, the defendant, The City of New York, failed to take any steps to redress or halt same.
38. The rights of the plaintiff under the Constitutions of the United States and State of New York have been violated, including those arising from the Fourth, Sixth and Fourteenth Amendments to the Constitution of the United States of America.
39. That by reason of the aforesaid, plaintiff has been damaged and requests compensatory damages of TEN MILLION (\$10,000,000.00) DOLLARS, and punitive damages of TEN MILLION (\$10,000,000.00) DOLLARS.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

40. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "39" with the same force and effect as if more fully set forth herein.
41. That by reason of the aforesaid, plaintiff demands punitive damages in the amount of TEN MILLION (\$10,000,000.00) DOLLARS.

AS AND FOR A SIXTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

42. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "41" with the same force and effect as if more fully set forth herein.
43. That Plaintiff was subject to all of foregoing because of his national origin, race, Latino and thereby in violation of his Federal, State and City Constitutional rights
44. That by reason of the aforesaid, plaintiff demands punitive damages in the amount of TEN MILLION (\$10,000,000.00) DOLLARS.

WHEREFORE, the plaintiff demands judgment against the defendants in the sum of TEN MILLION DOLLARS on each of the causes of action; TEN MILLION DOLLARS in compensatory damages and TEN MILLION DOLLARS in punitive damages.

Dated: New York, NY
November 10, 2016

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By: 

Richard Kubick (RAK-8331)